BOO MING HAI

v.

INSPECTOR-GENERAL OF POLICE & ORS.

HIGH COURT MALAYA, MUAR
RICHARD TALALLA JC
[CRIMINAL APPLICATION NO. 44-80 OF 1989]
12 DECEMBER 1990

STATUTORY INTERPRETATION: *Habeas corpus - Detention order - Fundamental rights - Deprivation of liberty - Strict procedural statutory requirements - De minimis non curat lex - Failure to comply with requirements - Effect of - Interpretation of Act - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3, 6, 11C(1) - Federal Constitution, Article 5.*

The applicant B was detained under s. 6(1) Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) and is making a *habeas corpus* application for his release. In considering the application the Court had to determine whether the procedural requirements in the Act had been strictly complied with and if not, whether the failure was a trivial one.

Held:

[1] Section 11C(1) of the Act precludes this Court from reviewing or exercising any jurisdiction in respect of the Minister's order save in regard to any question on compliance with any procedural requirement in the Act governing that order; the requirements imposed by the Legislature are strict as it concerns the constitutionally guaranteed rights of deprivation of liberty.

[2] (a) The requirements for submission of the report of investigation to the Minister is stringently required and provided for by s. 3(3) of the Act; in this case the report was submitted to the Ministry and not the Minister;

(b) this requirement falls within the overall pattern of the stringency contained in the Act and if it was in order for the report to be submitted to the Ministry and not the Minister, Parliament would have so stated;

(c) there is much difference between submitting the report to the Minister who is the very person who is required to give consideration to it before deciding whether or not to deprive a person of his liberty and submitting the report to the Ministry which is inanimate. In this regard a question which comes to mind is what constitutes effective submission of a document to a Ministry;

(d) it is doubtful and uncertain as to what constitutes effective submission of a document to a Ministry;

(e) there was no evidence of reference to or consideration by the Minister of a report required to be submitted under s. 3(3)(b).

[3] On the facts of this case, the *de minimis* rule does not apply as the failure to submit the report to the Minister was not a mere triviality.

[B's application allowed.]

Cases referred to:

Re Tan Boon Liat @ Allen & Anor. [1977] 2 MLJ 108

Hong Siew Sin & Anor. v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. [1990] 1 CLJ (Rep) 121

Cham Yoon Liang v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor. [1989] 1 CLJ (Rep) 354

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, s. 6(1)

For the applicant - Tan Hock Chuan; M/s. Syarikat Kam Woon Wah
For the respondents - Noorbahri bin Baharuddin, Federal Counsel

JUDGMENT

Richard Talalla JC:

This is an application for an order that a writ of *habeas corpus* be issued to the end that the applicant who is currently detained pursuant to an order of detention made by the Minister, the 2nd defendant, under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) be released.

There are certain fundamental rights granted to every person in this country. One of those rights is a person's liberty, for it is written in Article 5 of the Constitution that no person shall be deprived of his liberty save in accordance with law.

The law under which the applicant is deprived of his liberty being the Act, the relevant provisions of the same need to be examined.

Section 11C(1) of the Act precludes this Court from reviewing or exercising any jurisdiction in respect of the Minister's order save in regard to any question on compliance with any procedural requirement in the Act governing that order.

Thus Parliament has imposed on this Court the duty of ensuring that those procedural requirements have been duly carried out.

As I see it the requirements imposed by the Legislature are strict. That they are strict is quite understandable. After all one of a person's constitutional rights is sought to be taken away from that person, a *fortiori* without the usual right to a public trial.

So by reference to s. 3 of the Act a person cannot be detained for more than:

> 24 hours except with the authority of a police inspector, 48 hours except with the authority of an Assistant Superintendent of Police, 14 days except by reference to the Inspector-General of Police through a Deputy Superintendent.

The Deputy Superintendent is required to report the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

That is not all. Pursuant to s. 3(3) of the Act:

> The police officer making an investigation pertaining to a person arrested and detained under this section shall cause a copy of the complete report of the investigation to be submitted:
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> (a) to an inquiry officer appointed under subsection (1) of s. 5; and
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> (b) to the Minister, within such period as may be prescribed by the Minister by regulations made under this Act.

These then are the requirements that have to be met by the police before the Minister can consider making a detention order.

It is provided in s. 6(1) of the Act as follows:

> Whenever the Minister, after considering:
>
> (a) the complete report of investigation submitted under subsection (3) of s. 3; and
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> (b) the report of the inquiry officer submitted under subsection (4) of s. 5,
>
> is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a "detention order") direct that such person be detained for a period not exceeding two years.

This Court in monitoring compliance with the procedural requirements in the Act governing a detention order is bound by decisions of the Supreme Court and its predecessor the Federal Court relating to the exercise of the Courts supervisory duty under the Act.

It is stated in *Re Tan Boon Liat @ Allen & Anor.* [1977] 2 MLJ 108 at p. 110 as follows:

> The duty of the Court is to protect the liberty of the individual. However distasteful and undesirable the character of the detenu may be, it is still the duty of the Court to construe the law according to accepted principles of interpretation. Thus in *Musa bin Salleh v. PP* this Court, in holding an order valid, made clear that any doubt about the validity of a detention or restriction order should be resolved in favour of the accused.

On the other hand the Supreme Court has ruled that it is correct in cases such as this to apply the *maxim de minimis non curat lex* (the Court should not deal in trivialities). See *Hong Siew Sin & Anor. v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.* [1990] 1 CLJ (Rep) 121.

Counsel for the respondents submitted that the Minister heads the Ministry and when the report is sent to the Ministry it will eventually reach the Minister. An affidavit filed in support of the case of the respondents spoke of the report being submitted to the Ministry and not the Minister. The said Counsel's submission was that although the affidavit speaks to the word "Ministry" instead of the Minister the report was received by the Minister himself. Counsel offered no basis for making these statements from the Bar. I am unable to accept them for the purpose of deciding this case. In this regard I find support in the decision of Mohtar Abdullah JC (as he then was) in *Cham Yoon Liang v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.* [1989] 1 CLJ (Rep) 354 at p. 358. I accept that there was a failure to comply with the requirements of s. 3(3)(b) of the Act in that the report was not submitted to the Minister but to the Ministry.

The question then is whether this failure is a mere triviality to which the *de minimis* rule should apply. In answering that question I look to the legislation itself. The requirement that the report be submitted to the Minister falls within the overall pattern of stringency contained in the Act as a whole. If it was in order for the report to be submitted to the Ministry and not the Minister it would have been stated so by Parliament. To my mind there is much difference between submitting the report to the Minister who is the very person who is required to give consideration to it before deciding whether or not to deprive a person of his liberty and submitting the report to the Ministry which is inanimate. In this regard a question which comes to mind is what constitutes effective submission of a document to a Ministry. How is it done? Is it submitted to a natural person in relation to the Minister or is

it sufficiently simply to leave the document at some place said to be the Ministry? The matter is clouded with doubt and there is no definite and effective answer. It seems to me that that is why the Act requires the report to be submitted to the Minister and not the Ministry. Submission to the former is clear and decisive and fits well into the pattern of stringency provided in the Act. Submission to the latter is vague and dubious.

Accordingly the view I take is that the *de minimus* rule cannot be applied in this case. I find that the provisions of s. 3(3)(b) of the Act had to be compiled with strictly and they were not so compiled with. I find by recourse to the affidavits filed that there was no evidence of reference to or consideration by the Minister of a report required to be submitted under s. 3(3)(b). It has to follow that the detention order is bad. I allow the application.

Also found at [1991] 2 CLJ 996